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Sixth session

SUMMARY RECORD OF THE 80th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 April 1991, at 3 p.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of Algeria (continued) (CAT/C/9/Add.5)

1. Mr. SEMICHI (Algeria) said that his delegation had taken note of the comments made at the previous meeting regarding the exhaustive nature of the section of his country's report devoted to the general legal framework and he assured the members of the Committee that efforts would be made to deal more concisely with that question in his country's future reports. He stressed, however, that, in describing the general framework, his Government's competent authorities had been trying, at the current initial stage in the relationship with the Committee, to draw attention to the politico-legal context in which Algeria had been evolving since its independence. That explained the numerous references to political speeches made by the Head of State, reflecting the manner in which the judiciary was performing its function of protecting individual freedoms.

2. With regard to the questions relating to the Constitutional Council, he said that it was composed of seven members, two appointed by the President of the Republic, two by the National People's Assembly and two by the Supreme Court. The seventh member was also appointed by the President of the Republic on the basis of a virtually unanimous decision by Algerian society, in that, since the Council's establishment, its President had been a former Minister of Justice who was one of the most respected persons in the country. The Council was responsible for guaranteeing compliance with the Constitution and had on several occasions been called upon to hand down decisions on legal questions. Its authority was fully established within Algerian society.

3. Referring to situations where the President of the Republic could declare a state of siege, emergency or exception, he said that, under certain articles of the Constitution, the President of the Republic could declare a state of emergency after consultation with the National Security Council, the President of the National People's Assembly, the Head of the Government and the President of the Constitutional Council. The President himself could declare a state of exception if he believed that there was a threat to national security or the country's institutions. It should be noted that, since the adoption of the new Algerian Constitution, no such situations had arisen. A state of emergency, which had been proclaimed in 1988 under the previous Constitution, had been justified by the existence of a situation that had threatened Algerian institutions.

4. As to the question concerning the alleged refoulement of Moroccan soldiers on the Algerian border a few months previously, he said that press reports had been issued on the subject. At that time, he had received information on his authority's official reaction published by the official Algerian press. However, he had no further information at the present time.

5. Mr. BOUZERTINI (Algeria) said that the Constitution of 2 February 1989 provided for the separation of powers and the independence of the judiciary and made it incumbent on Algerian legislators to ensure the protection of individual rights and freedoms. Under article 123 of the Constitution, treaties ratified by the President of the Republic took precedence over internal law.

6. One of the first legislative actions taken by Algeria had related to the regulations governing the judiciary. It was important that the judiciary should be able to ensure its independence vis-à-vis the legislative and executive powers and, under the Constitution, judges were required to obey only the law.

7. The new statutes of the Supreme Council of Justice prevented representatives of the Ministry of Justice from participating in disciplinary sessions in order to ensure that magistrates would be judged only by their peers. The new statutes made it clear that the judiciary was independent from the executive and referred in one of their articles to the new oath taken by judges. While in the past judges had had to take an oath relating to the fundamental values of the nation and to the principles of the revolution, the new oath no longer referred to those concepts.

8. The purpose of the constitutional provision which prohibited judges from joining any political association was precisely to protect and strengthen the independence of the judiciary. On the other hand, they were permitted to be associated with trade unions and there was in fact a trade union whose membership was composed of judges.

9. With regard to changes in the functioning of the Supreme Court, it was important to note that, under the previous legislation, the procedure for appeal against acts by the authorities and for dealing with administrative disputes had been very slow. The new legislation sought to improve matters by increasing the number of court divisions and judges. The Supreme Court was financially independent of the Ministry of Justice.

10. Referring to the revision of the Code of Criminal Procedure, he said that, as far as police custody was concerned, the Constitution provided for a duration of 48 hours. During that time, a person in police custody could communicate with his lawyer, be examined by a physician of his own choice and at all times enter into direct contact with members of his family. The Department of Public Prosecutions endeavoured to ensure that those measures were strictly applied by the police.

11. The Code of Criminal Procedure laid down strict rules designed to safeguard the rights of the defence. While police custody was generally for a period of 48 hours, in certain instances, the police could request the Public Prosecutor to extend that period. Where the crime in question was against State security, for example, it could be extended by up to 48 hours. It should be noted, however, that, since the proclamation of the new Constitution, no such extension had been granted by the Public Prosecutor.

12. While the police was directly under the Ministry of the Interior and the gendarmerie under the Ministry of Defence, the police and the gendarmerie, acting as judicial police, were subject to the supervision of the Public Prosecutor. Each police station and gendarmerie brigade maintained a register of persons in police custody. The Public Prosecutor monitored the activities of the judicial police and, if necessary, challenged any official who committed an abuse of powers.

13. There were 31 courts of appeal and a Supreme Court in Algeria. There was also a juvenile court in which the rights of the defence were protected to an even greater extent. The presence of a lawyer was obligatory in such courts. In addition, there were military courts which were competent only to deal with offences committed by military personnel in military areas.

14. There had been changes in Algerian legislation which went further towards implementing the Convention. The health laws had been amended to include the stipulation that physicians must report any evidence of ill-treatment of minors or persons deprived of their liberty which they came across in the course of their duties. During their training, physicians learned about the international human rights standards to which Algeria was subject and they were entirely independent of the Government in ethical matters.

15. The Prison Administration and Re-education Code dated from 1972, before the Convention had been drawn up, but it was a very progressive instrument which sought to make the conditions of detention of prisoners more humane. The prison system in Algeria currently comprised 65 pre-trial detention centres, 30 rehabilitation centres, 5 work-release centres and 4 juvenile prisons. They had a combined capacity of 24,000 persons in theory and 19,000 persons in practice. The aim of the present system was to rehabilitate prisoners and reintegrate them into society by providing appropriate work for them. Prisoners could not be forced to work, but, if they chose to do so, they earned the same wage and were governed by the same labour laws as all other workers. However, prisoners were obliged to pay back their legal expenses from the money they earned.

16. An amnesty law had been adopted in August 1990 and covered all offences committed during the state of emergency between 1980 and 1988 and all persons who had committed offences against the security of the State between 1980 and February 1989. All mention of those offences was to be expunged from the offender's criminal record and anyone who subsequently referred to the offences would be punished.

17. The act governing the profession of lawyer became law in January 1991. A lawyer was no longer considered a court officer, but an agent contributing to the protection of individual freedoms.

18. The Government had taken a number of measures to improve education and training for legal and judicial personnel. There were courses for judges on the international treaties and conventions ratified by Algeria and on individual freedoms under the Constitution, which included the prohibition of torture. A series of seminars had been held for the judicial police. Three schools for prison officers had been opened and had already trained more than 1,300 persons. A council for medical ethics had also been established. In the period 1989-1990, the President had pardoned or reduced the sentence of more than 10,000 prisoners and a human rights office had been established under the Ministry of Justice to work with non-governmental organizations to investigate cases of human rights abuses.

19. Turning to the Algerian Government's implementation of the Convention article by article, he said that it was true that there was no definition of torture in the Penal Code, although there was such a definition in article 1 of the Convention, which had force of law in Algeria.

20. In connection with the extradition of alleged torturers (art. 6), Mr. Dipanda Mouelle had asked what would happen if an Algerian woman had been tortured by a foreign national in another country. It was true that the Code of Criminal Procedure would not permit the extradition of an alleged torturer in such circumstances, unless the offence had taken place on a ship or aircraft. The Government would take note of that discrepancy and try to remedy it in future. In general, however, the Algerian authorities would detain a person suspected of torture in another country on the request of the State concerned and the Supreme Court would decide whether extradition should take place.

21. The Penal Code did not lay down specific penalties for acts of torture, but article 107 stated that agents of the State who infringed individual freedoms were subject to a prison sentence of 5 to 10 years. Article 110 bis of the Code of Criminal Procedure said that agents of the State found guilty of acts of torture would receive a prison sentence ranging from six months to three years.

22. Referring to article 10 of the Convention, he said that all officials participating in investigations had attended special training courses on their obligation to protect individual freedoms. As to compensation for victims of torture (art. 14), the Code of Criminal Procedure stated that either the judicial police or the victim of the act of torture could institute compensation proceedings. In some circumstances, the State bore civil liability for acts committed by its agents and the State could then claim back the amount of compensation paid from the person who had committed the offence.

23. The Committee had asked about the status of a confession in law. A confession could not be accepted as sole proof of guilt; the judge would accept or reject the confession in the light of the other evidence available.

24. Mr. Dipanda Mouelle had asked about the amount of money which a foreign national was obliged to pay in order to be released on bail. The amount in question was determined by the Code of Criminal Procedure and was designed to cover the cost of the trial and any fines which the defendant might have to pay if convicted.

25. The Committee had asked for details of capital punishment in Algeria. No one had been executed for economic crimes since the 1960s; since then, the Supreme Court or the Court of Cassation had overturned all death sentences handed down by the criminal courts. No execution on any other grounds had been carried out since 1988 and some 30 persons were still under sentence of death, mostly for particularly abhorrent crimes involving sexual offences and/or offences against minors culminating in murder.

26. Mr. DIPANDA MOUELLE (Country Rapporteur) thanked the Algerian delegation for its pertinent replies. However, he still required clarification on a number of points. The disciplinary body for judges in Algeria was the Supreme Council of Justice. Did that body cover both judges and prosecutors? What was its present size and membership and who was its president? How many judges were there in the country as a whole in relation to the size of the population?

27. The Algerian delegation had said that physicians were required to report any cases of ill-treatment they found among their patients, but to whom should they report and what subsequent action was taken? Paragraph 32 of the report stated that judges were protected from all forms of pressure or interference. How was that protection provided in practice?

28. Mr. BOUZERTINI (Algeria) said that the Attorney-General was also the President of the Supreme Council of Justice. He did not know how many members it had. Deputies to the National Assembly were no longer allowed to join the Supreme Council and the only representative of the central administration was the director of personnel of the Ministry of Justice, who provided information on cases being handled by the central administration.

29. Both judges and prosecutors belonged to the Supreme Council of Justice. However, a judge answering a disciplinary charge would appear only before other judges, under the chairmanship of the President of the Supreme Court, and a prosecutor would likewise be judged by his peers, under the chairmanship of the Chief Government Prosecutor at the Supreme Court.

30. A physician who found signs of ill-treatment in a minor or a person deprived of his liberty was obliged to report the case either directly to the Attorney-General or to the judicial police.

31. At present, there were 1,700 judges in Algeria. The legislative authority in Algeria had an obligation to protect the independence of the judiciary by means of measures such as Act No. 89-21 of 12 December 1989 on the regulations governing the judiciary (para. 31 of the report). Under that Act, judges were independent from Government ministries and the executive power and anyone who attempted to influence or threaten them was liable to punishment under civil law.

32. Ms. CHANET thanked the Algerian delegation for its precise and competent answers, but said that she still required clarification on two points. Firstly, what civil rights could be suspended during a state of exception or siege? Was the prohibition on torture expressly lifted in such circumstances? Secondly, could orders from a superior officer or a public authority be invoked to justify acts of torture?

33. Mr. BOUZERTINI (Algeria) said that there was no express reference to torture in the regulations governing states of exception or siege. After all, the declaration of such an emergency situation did not mean that torture would automatically take place.

34. Mr. SEMICHI (Algeria) said that, in the 1980s, under the previous Constitution, a state of exception had been declared and some civil rights, such as the right to peaceful assembly and the right to strike, had been temporarily suspended. The President could proclaim a state of exception, but it could not be prolonged without the consent of the National Assembly.

35. Mr. BOUZERTINI (Algeria), replying to Ms. Chanet's second question, said that all persons were held responsible for the acts they committed. A superior officer who ordered a subordinate to commit an unlawful act might be liable to prosecution as an accomplice or as the instigator of the act.

36. Mr. KHITRIN said that, according to the Algerian delegation, the maximum length of pre-trial detention was 16 months, which was a long time. Where were such prisoners held and under what conditions?

37. Mr. BOUZERTINI (Algeria) said that the law provided for different types of prison establishment, namely, detention centres for persons serving sentences of up to three years and rehabilitation centres for longer-term sentences. The Prison Code made no provision for detention camps and the establishments must in all cases be visited by judges, prosecutors and examining magistrates and could also be inspected by representatives of non-governmental organizations, Amnesty International and such United Nations human rights bodies as the Committee against Torture.

38. Conditions of detention had been considerably improved in the past 15 years, with increased Government expenditure on food, vocational training and the physical infrastructure in prisons. Conditions for pre-trial prisoners were similar to those for prisoners serving long-term sentences.

39. The CHAIRMAN said that he would welcome information on cases in which proceedings had been instituted against persons practising torture and on the compensation, if any, awarded to the victims.

40. Noting that there were gaps in the provisions concerning extradition, he said he hoped that the Government would take account of the Committee's concern in that regard.

41. He had some reservations about the explanations furnished by the Algerian representatives in respect of the status of confessions.

42. Mr. SEMICHI (Algeria) said that Algeria was a party to the relevant international conventions on refugees. His country acted as host to a large number of refugees fleeing from neighbouring countries for reasons of political persecution, such as the Sahrawi refugees who were concentrated in western Algeria. The country had a very long southern border and many refugees had crossed into Algeria to flee from drought and desertification, as well as persecution. The situation was complicated by the migrations of nomadic populations. His country's policy was to maintain good relations with neighbouring States through contacts between officials and to encourage repatriation by obviating the fear of reprisals. The assistance of international humanitarian institutions was appreciated in that regard. In the case of the Sahrawi refugees it was hoped that a solution would be found under United Nations auspices before the end of the year.

43. Mr. BOUZERTINI (Algeria) said that the only case of the ill-treatment of detainees had occurred when more than 100 prisoners had escaped from a penal establishment and had been badly treated after their rearrest. A commission of inquiry, with the participation of representatives of non-governmental organizations, had been set up and proceedings instituted against three warders under article 110 bis of the Penal Code.

The meeting was suspended at 4.40 p.m. and resumed at 4.55 p.m.

44. Mr. DIPANDA MOUELLE (Country Rapporteur) said that the replies given by the Algerian representatives had shed new light on the issues raised by the report, which described the efforts being made by the Algerian Government to

modernize its legislation in the interests of greater democracy. It was to Algeria's credit that it had formulated no reservations when signing and ratifying the Convention and that it had recognized the Committee's competence in respect of articles 20, 21 and 22 of that instrument.

45. Ms. CHANET said that the replies indicated some very positive developments in legal and constitutional reform in Algeria, particularly with regard to periods of pre-trial detention, ethical requirements for the medical profession and the training of law-enforcement officials.

46. At the same time, there was room for further improvement, especially in respect of the maximum period of police custody: although it had been reduced to 48 hours, which could be extended, it was still too long, even if provision had been made for access to detainees by doctors and family members.

47. Legislation was also needed to implement articles 5 and 7 of the Convention, clearly dissociating the question of extradition and refoulement from that of refugees and affirming the principle that no one should be sent back to a country in which torture was practised.

48. The CHAIRMAN said that the Committee had now concluded its work on the initial report of Algeria.

49. Mr. Semichi, Mr. Bouzertini, Mrs. Semichi and Mr. Khodja (Algeria) withdrew.

The meeting was suspended at 5.05 p.m. and resumed at 5.10 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

50. Mr. SORENSEN, introducing the draft optional protocol submitted by the Permanent Representative of Costa Rica in his letter dated 15 January 1991 and addressed to the Under-Secretary-General for Human Rights (E/CN.4/1991/66), said that the European Committee for the Prevention of Torture, of which he was Vice-Chairman, had a mandate similar to that of the Committee against Torture, but the two mandates did not overlap: one of the common concerns of the two Committees was the machinery for a system of visits to places of detention, as proposed in the document submitted by Costa Rica. The working procedure of the European Committee was to select delegations, whose members must be independent and of high moral standing, to visit places of detention, including prisons, police stations, military barracks and mental hospitals in member States of the Council of Europe which had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The basic thrust of the Costa Rican proposal was to universalize that procedure in the form of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

51. The proposal did not overlap with any of the procedures of the Committee against Torture, since the European Committee, unlike the latter, held most of its meetings in camera and made its suggestions to the countries concerned directly and on a confidential basis. However, he could foresee some difficulties in adapting its machinery to the resources of the Committee against Torture: it would, for example, involve visits by delegations requiring interpreting services in the working languages of the Committee and

would impose an extra workload on the Committee itself and on the chairman of any sub-committee set up specifically for the purpose. There might also be a need for regionalization in the light of the different standards to be legitimately required of penal institutions and places of detention in regions with widely varying levels of available resources.

52. Ms. CHANET said that she understood that the proposal had been considered by the Commission on Human Rights and would be reconsidered the following year. While the proposed system seemed ideal, it was open to question whether an optional protocol was required. Other problems also arose in connection with the composition of the proposed sub-committee and with issues related to article 15 of the Convention. There was also the danger inherent in the proliferation of sub-committees, namely, that they tended to free themselves from the control of their parent body.

53. The question was how the Committee could become involved in the arrangement, thereby contributing to the work of the Commission on Human Rights. It should begin by deciding whether, in principle, a universal instrument such as the proposed optional protocol was needed. Thereafter, it could consider whether it should have a guiding role and how that role should be defined in the protocol.

54. The CHAIRMAN informed Ms. Chanet that the latest version of the original 1980 draft protocol was the outcome of three days' intensive deliberations by independent experts at a meeting organized by a number of non-governmental organizations, held in Geneva in November 1990, at which a new text had been drafted and transmitted to the State of Costa Rica for submission to the forty-seventh session of the Commission on Human Rights.

55. Mr. KHITRIN said there was no denying the fact that some kind of body must visit places of detention. He had seen both from the Committee's proceedings and in his own country that torture occurred in places of detention. However, the proposal was still in its early stages and States should have an opportunity to study the documents submitted before stating their conclusions.

56. Mr. MIKHAILOV said that the letter from the Permanent Representative of Costa Rica contained a number of interesting proposals designed to improve the working methods of international human rights bodies. However, he doubted whether those proposals were realistic at the present time in view of the financial crisis worldwide and within the United Nations. Furthermore, it was open to question whether such a complex and subtle problem as the prevention of torture could be solved at the level of an international body. Prevention was a national problem; perhaps the main task of the international bodies was to provide States that lacked experience in that field with the modern methods and systems needed to combat torture.

57. The Committee against Torture could offer countries effective aid in the preparation of their country reports: it had already agreed that the appointment of a country rapporteur and an alternate country rapporteur to assist each country in the preparation of its report would greatly enhance the effectiveness of its working methods. The presentation he would make the following week would take account of the proposals by Costa Rica, which were acceptable in principle. Perhaps some form of compromise could be adopted between the second and third alternatives set out in paragraph 6 of the letter.

58. Mr. SORENSEN said that, in his opinion, the differences between the Committee against Torture and the European Committee for the Prevention of Torture were so great that their functions could not be mingled. The role of the Committee against Torture in the new system should be a purely elective one. Moreover, he feared that the introduction of a universal system might lead to cuts in the European Committee's budget. That Committee had already asked the Secretary-General and the Committee of Ministers of the Council of Europe to extend the European Convention to all countries participating in the CSCE process, including the United States and Canada; that would have the effect of further broadening its regional basis. He himself strongly favoured such a regional approach, rather than one based on the United Nations. While the process should be universal in coverage, the proposal to place it under the auspices of the Committee against Torture would give rise to too many practical difficulties.

59. Mr. BURNS said that no one could in principle oppose the idea of establishing some form of investigative agency with a universal mandate to visit places where acts of torture were alleged to have been committed. However, he suspected that the time was not yet ripe for introducing a universal system. The system for which the Committee against Torture was itself responsible was still far from universal and as yet imposed only the most basic requirements on States. Even States which had acceded to the Convention had formulated a large number of reservations to some of the basic elements it contained. It was surely inconceivable that those States would accede to an optional protocol conferring fuller investigative powers.

60. Furthermore, care must be taken not to dilute any regional arrangements that were already functioning at a high level, such as those in the framework of the Council of Europe. He did not see how the two arrangements would interlock. On grounds of cost alone, duplication of the Council of Europe's work by a United Nations body could not be justified.

61. Ms. DIAZ PALACIOS agreed that, although the proposal was interesting, it did not seem at first sight to be viable at the present time. On the basis of the reports submitted to the Committee and her own experience, she had concluded that one of the main sources of torture and cruel, inhuman and degrading treatment was overcrowding in prisons as a result of the large number of persons detained and not brought to trial, of excessively harsh sentences and of the fact that many persons were detained for specific economic or social reasons rather than for having committed serious crimes. She offered to prepare a brief document which would enable the Committee to propose some general measures to Governments with a view to alleviating that immediate problem, while ways were considered of making the proposal by Costa Rica viable in the longer term.

62. The CHAIRMAN, speaking as a member of the Committee, agreed that no one could oppose the proposal in principle. Visits to places of detention were a very effective means of combating torture. There was a need to link the protocol to the Convention against Torture, since there was already a proliferation of human rights conventions and bodies that were beginning to lead to conflicts of jurisdiction. Of course, the protocol could be linked to the Committee in ways other than those proposed in the letter from the Permanent Representative of Costa Rica. Nevertheless, the task of visiting places of detention and prisons throughout the world might fall to the 10 members of the Committee and a way would have to be found of enabling it to meet that increased workload.

63. Doubts had been expressed as to whether such a system could be set up at the universal level or whether it would be preferable to confine it to the regional or continental level. The fact remained that, up to the present, a regional system had been introduced only in Europe and seemed unlikely to be introduced elsewhere in the foreseeable future. It thus seemed worth trying to establish a universal system. Such an attempt might be dismissed as utopian, but the same had once been said of a Convention against Torture, to which 55 countries had none the less acceded. Of course, problems of national sensibilities would arise: tact would have to be exercised in the choice of delegations to visit the various countries.

64. The question of regional arrangements was also an important one. One good regional arrangement already existed and must not be jeopardized. However, article 9 of the draft optional protocol represented an attempt to solve that problem. Furthermore, as Mr. Burns had pointed out, the system under the Convention against Torture was not yet a universal one, since scarcely more than one third of Member States had acceded to the Convention and a number of those had lodged significant reservations. Nevertheless, it was his hope that within a few years, 100 or more countries would have acceded to the Convention. Consequently, although he appreciated the difficulties, he considered that the Committee should support the Costa Rican initiative, while attempting to improve specific aspects of the text.

65. Thus far, the members of the Committee had expressed personal opinions on the draft optional protocol which could be reflected in its annual report. The question of the opinion of the Committee as a whole, which might subsequently be requested by the Commission on Human Rights, could be taken up again at its next session.

The meeting rose at 6.05 p.m.